

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 13, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

HEATHER G.,¹

Plaintiff,

v.

MARTIN O'MALLEY, Commissioner of
Social Security,²

Defendant.

No. 2:23-cv-00297-EFS

**ORDER AFFIRMING THE ALJ'S
DENIAL OF BENEFITS**

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

² Martin O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, and section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), he is hereby substituted for Kilolo Kijakazi as the defendant in this suit.

1 Due to degenerative disc disease of the lumbar spine, depressive disorder,
2 anxiety disorder, post-traumatic stress disorder, hepatitis, a right-hand injury, and
3 alcohol and marijuana abuse, Plaintiff Heather G. claims that she is unable to
4 work fulltime and applied for supplemental security income benefits. She appeals
5 the denial of benefits by the Administrative Law Judge (ALJ) on the grounds that
6 the ALJ improperly analyzed the opinions of Steven Golub, MD, and Joyce
7 Everhart, PhD; failed to consider whether Plaintiff's condition equaled listing 1.15;
8 and improperly assessed Plaintiff's credibility. As is explained below, Plaintiff has
9 not established any consequential error. The ALJ's denial of benefits is affirmed.

10 I. Background

11 In March 2019, Plaintiff filed an application for benefits under Title 16,
12 claiming disability beginning January 1, 2018, based on the physical and mental
13 impairments noted above.³ Plaintiff's claim was denied at the initial and
14 reconsideration levels.⁴

15 After the agency denied Plaintiff benefits, ALJ Lori Freund held a telephone
16 hearing in July 2022, at which Plaintiff appeared with her representative.⁵
17 Plaintiff, a medical expert, and a vocational expert testified.⁶

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19 ³ AR 321-335, 356.

20 ⁴ AR 133, 145.

21 ⁵ AR 60-93.

22 ⁶ *Id.*

1 After the hearing, the ALJ issued a decision denying benefits.⁷ The ALJ
 2 found Plaintiff's alleged symptoms were not entirely consistent with the medical
 3 evidence and the other evidence.⁸ As to medical opinions, the ALJ found:

- 4 • The opinions of medical expert Steven Golub, MD, with the exception
 5 of his opinion regarding fine finger manipulation, to be persuasive.
- 6 • The opinions of medical expert Steven Golub, MD, regarding fine
 7 finger manipulation to be not persuasive.
- 8 • The opinions of Shana Colt, PA-C, to be neither persuasive nor
 9 probative because they did not relate to the relevant period.
- 10 • The opinions of consultative examiner Joyce Everhart, PhD, that
 11 Plaintiff suffered from unspecified anxiety disorder, unspecified
 12 depressive disorder, and PTSD to be persuasive.⁹
- 13 • The opinions of state agency evaluators Dan Donahue, PhD; Debra
 14 Baylor, MD; Carla Van Dam, PhD; and Jay Shaw, MD, to be generally
 15 persuasive.¹⁰

17 ⁷ AR 31-53. Per 20 C.F.R. § 416.920(a)–(g), a five-step evaluation determines
 18 whether a claimant is disabled.

19 ⁸ AR 40-46.

20 ⁹ The parties concede that the ALJ did not find the other findings in Dr. Everhardt's
 21 consultative examination report to constitute a "medical opinion."

22 ¹⁰ AR 43-46.

1 As to the sequential disability analysis, the ALJ found:

- 2 • Step one: Plaintiff had not engaged in substantial gainful activity
3 since March 26, 2019, the date of her application.
- 4 • Step two: Plaintiff had the following medically determinable severe
5 impairments: degenerative disc disease of the lumbar spine,
6 unspecified depressive disorder, unspecified anxiety disorder, and
7 post-traumatic stress disorder.
- 8 • Step three: Plaintiff did not have an impairment or combination of
9 impairments that met or medically equaled the severity of one of the
10 listed impairments, and the ALJ specifically considered Listings 1.15,
11 1.16, 12.04, 12.05, and 12.15.
- 12 • RFC: Plaintiff had the RFC to perform light work with the following
13 exceptions:

14 [Plaintiff] can lift up to twenty pounds occasionally and lift
15 and carry up to ten pounds frequently. She can stand and
16 walk for up to six hours in an eight-hour workday. She can
17 sit for at least six hours in an eight-hour workday. She can
18 never climb ladders, ropes, or scaffolds. She can occasionally
19 climb ramps and stairs. She can occasionally stoop, kneel,
20 crouch, and crawl. She must avoid all exposure to
21 unprotected heights, extreme cold, and excessive vibration.
22 She is limited to simple and repetitive tasks with occasional
23 changes in the work setting. She can have occasional
interaction with the general public and coworkers.

- 20 • Step four: Plaintiff has no past relevant work.
- 21 • Step five: considering Plaintiff's RFC, age, education, and work
22 history, Plaintiff could perform work that existed in significant
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1 numbers in the national economy, such as a housekeeper (DOT
 2 323.687-014), outside deliverer (DOT 230.663-010), and mailing clerk
 3 (DOT 209.587-034).¹¹

4 Plaintiff timely requested review of the ALJ's decision by the Appeals
 5 Council and now this Court.¹²

6 II. Standard of Review

7 The ALJ's decision is reversed "only if it is not supported by substantial
 8 evidence or is based on legal error,"¹³ and such error impacted the nondisability
 9 determination.¹⁴ Substantial evidence is "more than a mere scintilla but less than a
 10 preponderance; it is such relevant evidence as a reasonable mind might accept as
 11 adequate to support a conclusion."¹⁵

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 13 ¹¹ AR 36-47.

14 ¹² AR 315.

15 ¹³ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). *See* 42 U.S.C. § 405(g).

16 ¹⁴ *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012), *superseded on other*
 17 *grounds by* 20 C.F.R. § 416.920(a) (recognizing that the court may not reverse an
 18 ALJ decision due to a harmless error—one that "is inconsequential to the ultimate
 19 nondisability determination").

20 ¹⁵ *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir.
 21 1997)). *See also* *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The
 22 court "must consider the entire record as a whole, weighing both the evidence that
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III. Analysis

Plaintiff seeks relief from the denial of disability on three grounds. She argues the ALJ erred when evaluating the medical opinions and when evaluating Plaintiff's subjective complaints and in failing to properly consider whether she equaled a listing.¹⁶ As is explained below, the Court concludes that Plaintiff fails to establish the ALJ erred in her evaluation of the medical opinion evidence, the listings, or Plaintiff's symptom reports.

A. Medical Opinion: Plaintiff fails to establish consequential error.

Plaintiff argues the ALJ erred in her evaluation of the medical opinions.¹⁷ Specifically, Plaintiff first argues that the ALJ erred in finding the opinions of medical advisor Stephen Golub, MD, to be persuasive because he did not consider _____ supports and the evidence that detracts from the Commissioner's conclusion," not simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) ("An ALJ's failure to cite specific evidence does not indicate that such evidence was not considered[.]").

¹⁶ Plaintiff also avers that the first two errors resulted in an improper determination at step five.

¹⁷ An ALJ must consider and articulate how persuasive she found each medical opinion, including whether the medical opinion was consistent with and supported by the record. 20 C.F.R. § 416.920c(a)–(c); *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022).

the record in its entirety and did not see evidence that Plaintiff had a positive straight leg raising. Plaintiff also argues that the ALJ erred in failing to consider the opinions of Joyce Everhart, PhD, regarding Plaintiff's physical limitations.

1. Standard

The ALJ was required to consider and evaluate the persuasiveness of the medical opinions and prior administrative medical findings.¹⁸ The factors for evaluating the persuasiveness of medical opinions and prior administrative medical findings include, but are not limited to, supportability, consistency, relationship with the claimant, and specialization.¹⁹ Supportability and consistency are the most important factors,²⁰ and the ALJ must explain how she considered the supportability and consistency factors when reviewing the medical opinions and support her explanation with substantial evidence.²¹ The ALJ may consider, but is not required to discuss the following additional factors: the source's relationship to Plaintiff such as length of the treatment, purpose of the treatment relation and

¹⁸ 20 C.F.R. § 416.920c(a), (b).

¹⁹ 20 C.F.R. § 416.920c(c)(1)–(5).

²⁰ *Id.* § 416.920c(b)(2).

²¹ *Id.* § 416.920c(b)(2); *Woods v. Kijakazi*, 32 F.4th a at 785 (“The agency must articulate . . . how persuasive it finds all of the medical opinions from each doctor or other source and explain how it considered the supportability and consistency factors in reaching these findings.”) (cleaned up).

whether the source examined Plaintiff, as well as whether the source had advanced training or experience to specialize in the area of medicine in which the opinion was being given.²² When considering the ALJ's findings, the Court is constrained to the reasons and supporting explanation offered by the ALJ.²³ An ALJ is not required to articulate how they considered evidence from nonmedical sources using the requirements in paragraphs (a) through (c).²⁴

2. Dr. Steven Golub's Testimony

On July 27, 2022, Steven Golub, MD, appeared by telephone and testified before ALJ Lori Freund as a medical expert.²⁵ Dr. Golub testified that his resume accurately reflected his background and that he understood that he was to testify as an impartial expert.²⁶ Dr. Golub stated that he reviewed the exhibits through Exhibit 24F.²⁷ Dr. Golub stated that he had enough information to give a medical opinion as to severe impairments. Dr. Golub stated that Plaintiff has a history of substance abuse, including meth; the use of unprescribed opiates for chronic low

²² *Id.*

²³ *See Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014) (recognizing court review is constrained to the reasons the ALJ gave).

²⁴ 20 C.F.R. § 416.920c(d)

²⁵ AR 60-93.

²⁶ AR 66-67.

²⁷ AR 68.

1 back pain; a herniated disc at L4/5 with mild nerve root impingement and
2 prescribed treatment of epidural steroid injections which he was unsure she
3 received.²⁸ He stated that he reviewed notes at Exhibits 18F, 19F and 20F,
4 regarding musculoskeletal symptoms; an x-ray of the spine taken in August 2020,
5 which was negative and a physical examination which was within normal limits;
6 and a treatment note from October 2020 which noted chronic low back pain but
7 stated that Plaintiff had been noncompliant with suggestions to attend physical
8 therapy.²⁹ Dr. Golub noted that in October 2021 Plaintiff was followed-up for
9 chronic back pain but was using alcohol and that the physical examination was
10 negative with regard to any focal, neurologic abnormalities.³⁰ Dr. Golub noted
11 treatment for a dog bite in July 2021 and that Plaintiff was noted to have elevated
12 liver enzymes and possibly suffering from hepatitis as a result of excessive Tylenol
13 use.³¹ Dr. Golub also noted that Plaintiff had surgical procedures in November
14 2018 and July 2018.³²

18 ²⁸ *Id.*

19 ²⁹ AR 68-69.

20 ³⁰ AR 69.

21 ³¹ *Id.*

22 ³² *Id.*

1 Dr. Golub testified that none of Plaintiff's conditions met or equaled a
2 medical listing.³³ Dr. Golub opined that Plaintiff would have the following work
3 limitations: she could lift and carry 10 pounds frequently and 20 pounds
4 occasionally in an eight-hour day; could sit for six hours and stand and walk for a
5 total of six hours; could perform manipulative activities with her shoulders and
6 hands frequently; could stoop, crawl, kneel, and climb stairs occasionally; should
7 avoid exposure to unprotected heights; should avoid exposure to extreme cold; and
8 should avoid exposure to vibration in the lower extremities.³⁴ Dr. Golub also said
9 that he did not find any need for a cane or assistance device.³⁵ Dr. Golub opined
10 that those limitations would have been in place since January 1, 2018.

11 Dr. Golub stated that Plaintiff's back injury could produce some degree of
12 pain.³⁶ Dr. Golub stated that he focused on objective evidence.³⁷ Plaintiff's attorney
13 asked whether straight leg raising could indicate nerve root impingement and
14 Dr. Golub stated that it could but that in this case the examination did not show
15 any findings that corroborated significant nerve root compression.³⁸ Dr. Golub
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17 ³³ *Id.*

18 ³⁴ AR 69-70.

19 ³⁵ AR 70.

20 ³⁶ AR 70-71.

21 ³⁷ AR 71.

22 ³⁸ *Id.*

1 explained that clinically there was no pain distribution consistent with the site of
2 impingement and that there had been multiple examinations within normal
3 limits.³⁹ Plaintiff's counsel again asked if straight leg raising, numbness, tingling,
4 lack of sensation or strength in the lower extremities would be neurological
5 findings.⁴⁰ Dr. Golub said they could be but stated that if there was a significant
6 nerve root compression you would see neuromuscular findings to support
7 compression and there were none in the record.⁴¹ When asked if he prescribed
8 medications in his practice, Dr. Golub said he did.⁴² When asked if muscle relaxers
9 and Gabapentin were used to treat muscle cramping and nerve cramping, Dr.
10 Golub said that they were among the medications used.⁴³

11 3. Relevant Medical Records

12 a. Maple Street Clinic

13 On October 22, 2021, Plaintiff presented to ARNP Alexis Houser of the
14 Maple Street Clinic.⁴⁴ On examination, Plaintiff had normal muscle tone and
15 strength; she had no contractures, misalignment, or bone abnormalities; she had
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17 ³⁹ *Id.*

18 ⁴⁰ *Id.*

19 ⁴¹ *Id.*

20 ⁴² AR 72.

21 ⁴³ *Id.*

22 ⁴⁴ AR 989.

1 tenderness to palpation of the left-side lumbar spine and reduced range of motion
2 due to pain; she had a positive seated straight leg raising on the left; she had
3 normal and equal Achilles and patellar deep tendon reflexes; sensation was intact
4 bilaterally in the lower extremities; and there was no cyanosis, edema or
5 varicosities in the lower extremities.⁴⁵

6 *b. Joyce Everhart, PhD*

7 On June 17, 2019, Joyce Everhart, PhD, examined Plaintiff at the request of
8 the Commissioner.⁴⁶ On examination, Plaintiff had good long-term memory, was
9 able to recall the presidents and surrounding states and could remember three of
10 three objects, could do serial sevens, and could spell world forward and backward.⁴⁷
11 She understand proverbs and similarities.⁴⁸ Plaintiff was able to complete
12 Trailmaking Part A and B with no errors.⁴⁹

13 Dr. Everhart assessed Plaintiff with Unspecified Anxiety Disorder,
14 Unspecified Depressive Disorder, and Posttraumatic Stress Disorder and deferred
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18 ⁴⁵ AR 993.

19 ⁴⁶ AR 852-858.

20 ⁴⁷ AR 855.

21 ⁴⁸ *Id.*

22 ⁴⁹ AR 856.

1 opinions regarding physical medical conditions to a physical medicine specialist.⁵⁰

2 Dr. Everhart opined that Plaintiff's condition was guarded.⁵¹

3 Dr. Everhart noted that Plaintiff needed assistance to complete her activities
4 of daily living and had a caregiver who came twice a week.⁵² She opined that
5 Plaintiff presented as anxious and depressed; showed no difficulty with executive
6 functioning; would be able to understand, remember, and carry out simple
7 directions; had good eye contact; had normal speech; and showed no evidence of
8 decompensation.⁵³ She also noted that Plaintiff walked slowly with a somewhat
9 impaired gait and station and showed pain, but again deferred any opinion
10 regarding physical condition to a physical medicine specialist.⁵⁴

11 4. Analysis

12 a. The ALJ's consideration of the opinions of Steven Golub, MD

13 Plaintiff argues that the ALJ erred in relying upon Dr. Golub's testimony
14 because he mischaracterized the medical evidence by: failing to consider Plaintiff's
15 subjective pain, overlooking positive straight leg raising, incorrectly stating that
16 Plaintiff was noncompliant with physical therapy, failing to recognize that Plaintiff

18 ⁵⁰ *Id.*

19 ⁵¹ *Id.*

20 ⁵² AR 857.

21 ⁵³ *Id.*

22 ⁵⁴ *Id.*

1 had epidural injections, and incorrectly claiming that the record lacked
2 neuromuscular findings that would support significant compression.⁵⁵ Plaintiff
3 argues that Dr. Golub says the last medical note he saw was from July 2021, and
4 that he thus did not review the most crucial evidence—a straight leg raising test
5 performed in October 2021.⁵⁶

6 As an initial matter, the specific page reference given by Plaintiff in support
7 of her contention that Dr. Golub did not review the October 2021 medical note
8 disproves rather than proves her assertion. Dr. Golub specifically noted the
9 October 2021 visit in his testimony. Dr. Golub testified:

10 In October 21, at 22F, claimant was followed up for low back pain. At
11 that point in time the claimant had been using a significant amount of
12 alcohol. The [physical examination] was negative with regard to any
13 focal, neurologic abnormalities and let's see. In 23F claimant was
14 presented with a dog bite. The work up and evaluation was negative.
15 Claimant was provided a splint on the right hand that was bitten and
16 lastly in July 21—that is the last note I saw.⁵⁷

17 Notably, the medical records located at 22F are those of Maple Street
18 Clinic.⁵⁸ The medical records located at 23F are those of Deaconess Hospital
19 Emergency Room.⁵⁹ The fact that the medical records from Deaconess Hospital

20 ⁵⁵ ECF No. 9.

21 ⁵⁶ *Id.*

22 ⁵⁷ AR 69.

23 ⁵⁸ AR 989-1011.

⁵⁹ AR 1012-1118.

1 were admitted to the record after those of the Maple Street Clinic has no bearing
2 on whether Dr. Golub reviewed the treatment record of October 2021. He did
3 review that record and properly identified it as being contained in Exhibit 22F.
4 Moreover, in his testimony Dr. Golub specifically addressed the straight leg raising
5 test that Plaintiff asserts he did not consider.

6 Plaintiff's attorney questioned Dr. Golub about the straight leg raising test
7 and asked if the test, in conjunction with the MRI would be reasonably expected to
8 cause severe pain.⁶⁰ Dr. Golub replied:

9 Well, again, it could. Certainly, with the finding it is certainly possible.
10 The issue here is that clinically on examination claimant did not have
11 any significant findings that would indicate significant nerve root
12 compression disease. Meaning there is no distribution pain consistent
13 with the site of impingement (sic) and clinically there was more than
14 one examination reported to be essentially within normal limits.⁶¹

15 Dr. Golub addressed the straight leg raising test directly and testified that
16 even after considering that fact, he did not find that it supported a higher degree of
17 impairment because the associated findings were not consistent with a severe
18 nerve root compression in the area indicated. Specifically, Dr. Golub clarified that
19 the neuromuscular findings were all normal. Dr. Golub did not mischaracterize
20 the findings as Plaintiff asserts. On examination, Plaintiff had normal muscle tone
21 and strength; she had no contractures, misalignment or bone abnormalities; she
22 had tenderness to palpation of the left-side lumbar spine and reduced range of
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⁶⁰ AR 71.

⁶¹ AR 71.

1 motion due to pain; she had a positive seated straight leg raising on the left; she
2 had normal and equal Achilles and patellar deep tendon reflexes; sensation was
3 intact bilaterally in the lower extremities; and there was no cyanosis, edema or
4 varicosities in the lower extremities.⁶²

5 Dr. Golub testified that the distribution of pain was not consistent with the
6 allegations of pain. Plaintiff argues that this was incorrect using only the non-
7 expert assertions of her attorney. Neither Plaintiff's attorney nor the ALJ have
8 medical training which would qualify them to interpret the raw data on their own.
9 No other acceptable medical source has controverted Dr. Golub's opinions and
10 findings and it would have been inappropriate for the ALJ to attempt to interpret
11 the complex medical data on her own.⁶³

12 Plaintiff's remaining two claims are inconsequential at best. Plaintiff's
13 assertion that Dr. Golub incorrectly stated that Plaintiff did not have epidural
14 injections is also incorrect. Dr. Golub stated that the record indicated that Plaintiff
15 was prescribed epidural injections but he was not sure if she received them.⁶⁴
16 There is no indication that Dr. Golub considered the injections unnecessary or that

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18 ⁶² AR 993.

19 ⁶³ ALJs cannot usurp the role of doctors when interpreting medical evidence,
20 particularly highly technical medical evidence. *Trevizo v. Berryhill*, 871 F.3d 664,
21 683 (9th Cir. 2017).

22 ⁶⁴ AR 68.

1 he faulted Plaintiff for noncompliance, instead he acknowledged that Plaintiff's
2 medical sources had prescribed them but stated that the record was unclear if and
3 when they were administered.

4 Lastly, Plaintiff asserts that Dr. Golub unfairly characterized her as
5 noncompliant with physical therapy because she could not attend appointments
6 during the Covid-19 pandemic, but the record indicates that her failure to attend
7 appointments pre-dated the pandemic.⁶⁵

8 The Court thus concludes that Plaintiff failed to establish consequential
9 error in the ALJ's consideration of Dr. Golub's testimony.

10 *b. The ALJ's consideration of Joyce Everhart, PhD's Statements*

11 Plaintiff argues that the ALJ erred in her finding that Dr. Everhart's report
12 was not a medical opinion as it related to her physical limitations and offers three
13 cases in support of her assertion.⁶⁶ Plaintiff is incorrect in her assertion.

14 A medical opinion is a statement from a medical source about what an
15 individual can still do despite her impairments, and whether the individual has
16 one or more impairment-related limitations and restrictions.⁶⁷

17 An acceptable medical source is a licensed physician; a licensed psychologist,
18 opining as to mental impairments, intellectual disability, learning disability, or

20 ⁶⁵ AR 960.

21 ⁶⁶ ECF No. 11.

22 ⁶⁷ 20 C.F.R. § 416.913.

1 borderline intellectual functioning; an optometrist opining as to visual disorders; a
2 podiatrist opining as to impairments of the foot and ankle; a speech pathologist
3 opining as to speech and language impairments; an audiologist opining as to
4 hearing loss, auditory processing disorders and balance disorders; an advanced
5 practice registered nurse opining as to impairments within their licensed scope of
6 practice; and a licensed physician's assistant opining as to impairments within
7 their licensed scope of practice.⁶⁸

8 There is no question that with regard to physical impairments, Dr. Everhart
9 was not an acceptable medical source. Despite the repeated references to
10 Dr. Everhart as a physician in Plaintiff's brief and reply brief, she is not a
11 physician. The regulations are clear that an MD or an OD are not limited in the
12 scope of medical conditions for which they can offer an opinion. All other medical
13 sources are limited to the ability to render an opinion only to those conditions
14 within the scope of their specific license. As a psychologist, Dr. Everhart was
15 limited to rendering an opinion only with regard to mental impairments and not
16 physical impairments.⁶⁹ Dr. Everhart was aware of that fact and twice deferred to
17 a physical medical specialist regarding physical impairments.⁷⁰

20 ⁶⁸ 20 C.F.R. § 416.902.

21 ⁶⁹ *Id.*

22 ⁷⁰ AR 856, 857.

1 The three cases which Plaintiff referenced are inapposite and tend to
2 disprove rather than support her assertion. Each case involves consideration of the
3 opinions of a licensed medical doctor, not the opinion of a psychologist. *Carr v.*
4 *Sullivan*, 772 F. Supp. 522 (E.D. Wash. 1991), and *Beecher v. Heckler*, 756 F.2d
5 693, 695 (9th Cir. 1985), addressed whether a psychiatrist properly opined as to
6 both physical and mental impairments. *Sprague v. Bowen*, 812 F.2d 1226, 1232
7 (9th Cir. 1987), addressed the issue of whether a general practice physician was
8 qualified to testify regarding psychiatric issues.

9 To the extent that Dr. Everhart opined as to physical and not mental
10 conditions, those opinions were those of a nonmedical source and the ALJ was not
11 obliged to articulate her consideration of them.⁷¹ Thus, the Court concludes that
12 the ALJ did not err in her consideration of Dr. Everhart's statements regarding
13 physical impairments.

22 ⁷¹ 20 C.F.R. § 416.920c

1 5. Summary

2 Because the ALJ committed no error in her consideration of the opinions of
3 Dr. Golub and the statements of Dr. Everhart, the Court finds that no
4 consequential error occurred and a remand is not warranted.

5 **B. Step Three (Listings): Plaintiff fails to establish error.**

6 Plaintiff contends the ALJ failed to provide substantial evidence to support
7 the finding that Plaintiff did not equal Listing 1.15A.⁷² The Court disagrees.

8 If a claimant meets all of the listing criteria or if her impairments medically
9 equal a listed impairment, she is considered disabled.⁷³ Medical equivalence will be
10 found if the medical findings are at least of equal medical significance to the
11 required criteria.⁷⁴ “[I]n determining whether a claimant equals a listing under
12 step three . . . the ALJ must explain adequately his evaluation of alternative tests
13 and the combined effects of the impairments.”⁷⁵ Pursuant to the applicable
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15 ⁷² ECF No. 9, 11. Plaintiff concedes that she does not meet the listing.

16 ⁷³ *See Sullivan v. Zebley*, 493 U.S. 521, 530 (1990) (requiring a claimant to show
17 that the impairment meets (or medically equals) all of the specified medical
18 criteria, not just some of the criteria).

19 ⁷⁴ 20 C.F.R. § 416.926; *Marcia v. Sullivan*, 900 F.2d 172, 175 (9th Cir. 1990).

20 ⁷⁵ *Marcia*, 900 F.2d at 176; *see also Lewis v. Apfel*, 236 F.3d 503, 512 (9th Cir. 2001)
21 (The ALJ “must evaluate the relevant evidence before concluding that a claimant’s
22 impairments do not meet or equal a listed impairment.”).

1 regulations, an ALJ may find that a plaintiff meets a listing without a medical
2 opinion supporting that finding, but cannot make a determination that a plaintiff
3 equals a listing unless that finding is supported by a medical opinion of record from
4 an acceptable medical source that the plaintiff's impairment medically equals the
5 listing.⁷⁶

6 The ALJ in this matter articulated that there was no medical opinion in the
7 record stating that Plaintiff equaled Listing 1.15 and that when asked if Plaintiff
8 equaled that specific listing, Dr. Golub testified that she did not equal the listing.
9 Thus, the ALJ had no authority to find that Plaintiff equaled Listing 1.15.

10 To the extent that Plaintiff is asking the Court to find the ALJ remiss for
11 having not taken an action that she was not empowered to take, the Court finds
12 the argument to be without merit. Remand is not warranted.

13 **C. Symptom Reports: Plaintiff fails to establish consequential error**

14 Plaintiff argues the ALJ failed to properly assess her subjective complaints
15 regarding physical disability. She argues that the ALJ gave a recitation of the
16 medical facts and then made a conclusory statement that the record does not
17 support Plaintiff's allegations of disability.

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19 ⁷⁶ Soc. Sec. Ruling 17-2p. *See also Sullivan v. Zebley*, 493 U.S. 521, 530 (1990)
20 (requiring a claimant to show that the impairment meets (or medically equals) all
21 of the specified medical criteria, not just some of the criteria).
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1 1. Standard

2 When examining a claimant's symptoms, the ALJ utilizes a two-step inquiry.
3 "First, the ALJ must determine whether there is objective medical evidence of an
4 underlying impairment which could reasonably be expected to produce the pain or
5 other symptoms alleged."⁷⁷ Second, "[i]f the claimant meets the first test and there
6 is no evidence of malingering, the ALJ can only reject the claimant's testimony
7 about the severity of the symptoms if [the ALJ] gives 'specific, clear and convincing
8 reasons' for the rejection."⁷⁸ General findings are insufficient; rather, the ALJ must
9 identify what symptom claims are being discounted and what evidence undermines
10 these claims.⁷⁹ "The clear and convincing standard is the most demanding required
11 in Social Security cases."⁸⁰ Therefore, if an ALJ does not articulate specific, clear,

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15 ⁷⁷ *Molina*, 674 F.3d at 1112.

16 ⁷⁸ *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter*, 504
17 F.3d at 1036).

18 ⁷⁹ *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995), and *Thomas v.*
19 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
20 explain why he discounted claimant's symptom claims)).

21 ⁸⁰ *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm'r*
22 *of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).
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1 and convincing reasons to reject a claimant's symptoms, the corresponding
2 limitations must be included in the RFC.⁸¹

3 2. Plaintiff's Testimony

4 On July 27, 2022, Plaintiff appeared with her attorney and testified before
5 ALJ Lori Freund.⁸² Plaintiff testified that she had not performed any work since
6 her alleged onset date of January 1, 2018.⁸³ She said that she had last worked in
7 2010 as a housekeeper and did that position fulltime for a short time in which she
8 earned only \$1000.00 for the year.⁸⁴ She said that she was fired from the job and
9 believes that it was for showing up late.⁸⁵ She did not seek work after being fired
10 because she was pregnant.⁸⁶ Plaintiff said that since January 2018 she had not
11 sought work because she was in AA and wanted to be clean and sober.⁸⁷ She said
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13 ⁸¹ *Lingenfelter*, 504 F.3d at 1035 (“[T]he ALJ failed to provide clear and convincing
14 reasons for finding Lingenfelter's alleged pain and symptoms not credible, and
15 therefore was required to include these limitations in his assessment of
16 Lingenfelter's RFC.”).

17 ⁸² AR 60-93.

18 ⁸³ AR 72.

19 ⁸⁴ AR 72-73.

20 ⁸⁵ AR 73.

21 ⁸⁶ *Id.*

22 ⁸⁷ AR 74.

1 that she would be looking for part-time work so she could pay child support and get
2 her children back in her care.⁸⁸ Plaintiff said her children were 12, 10, and 7 and
3 that she did not have custody or visitation with them because they were removed
4 due to concerns regarding alcoholism and mental health.⁸⁹ She said they were
5 removed in October 2021 and prior to that had been in her care since they were
6 born.⁹⁰ After children were removed from her home, she was removed from all
7 benefits other than Medicaid.⁹¹ Plaintiff said she had been sober for a year, since
8 May 26, 2021.⁹²

9 Plaintiff said that it took 3 months to complete rehab from marijuana and
10 that she presently uses CBD oil for pain from sciatica that radiates into her leg and
11 prevents her from moving around and taking care of her children.⁹³ She said she
12 also used crystal meth but did not have a good reaction to it.⁹⁴ Plaintiff denied that
13 she knew the marijuana she smoked was laced with meth and asserted that she
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16 ⁸⁸ *Id.*

17 ⁸⁹ AR 74-75.

18 ⁹⁰ AR 75.

19 ⁹¹ AR 75-76.

20 ⁹² AR 76.

21 ⁹³ *Id.*

22 ⁹⁴ *Id.*

1 went into the hospital for alcohol use, not use of meth.⁹⁵ Plaintiff said she had not
2 taken alcohol in eight months and that she had not taken any medication not
3 prescribed to her.⁹⁶

4 Plaintiff said that she had not had epidural injections in her back in two to
5 three years.⁹⁷ When asked why she could not work fulltime, Plaintiff said
6 codependency issues and that she doesn't need to do anything.⁹⁸ She said that she
7 did not object to working part time as long as it did not interfere with her spine,
8 neck, and legs and that she did exercise and do physical therapy.⁹⁹

9 Plaintiff said she has never been incarcerated and has never been in the
10 military.¹⁰⁰

11 3. The ALJ's Findings

12 The ALJ found Plaintiff's statements concerning the intensity, persistence,
13 and limiting effects of the symptoms of her medically determinable physical
14 impairments not entirely consistent with the medical evidence and other evidence
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17 ⁹⁵ AR 76-77.

18 ⁹⁶ AR 77-78.

19 ⁹⁷ AR 78.

20 ⁹⁸ *Id.*

21 ⁹⁹ *Id.*

22 ¹⁰⁰ AR 79.

1 in the record.¹⁰¹ The ALJ recited the medical record in detail, noting that Plaintiff
2 had one spinal surgery in 2017, as well as a left discectomy at L5/S1 and a spinal
3 fusion at L5/S1 in 2018.¹⁰² The ALJ also noted that prior to the relevant period
4 Plaintiff was prescribed a walker.¹⁰³ The ALJ noted that records in the early
5 relevant period prior to July 2019 include positive objective signs, such as
6 decreased range of motion and decreased strength with antalgic gait, but that “the
7 subsequent record indicates overall improvement and recovery from the remote
8 lumbar surgeries.”¹⁰⁴ The ALJ noted that records from September 2019 through
9 February 2020 indicated no deficit in strength, intact sensation, normal gait and
10 station, and no apparent distress when sitting, and that Plaintiff’s treating
11 physician noted that imaging studies were reassuring.¹⁰⁵ The ALJ also noted that
12 in August 2020 Plaintiff was seen in the emergency room because she had been
13 riding on a hoverboard and fell off, but that she had normal strength, no neurologic
14 deficits, and was discharged the same day in “good condition” after resolution of
15 her pain.¹⁰⁶

17 ¹⁰¹ AR 40-43.

18 ¹⁰² AR 41.

19 ¹⁰³ *Id.*

20 ¹⁰⁴ *Id.*

21 ¹⁰⁵ AR 41-42.

22 ¹⁰⁶ AR 42.

1 With regard to Plaintiff's issues with her spinal impairments, the ALJ
2 articulated her reasoning as follows:

3 The undersigned finds the claimant's allegations about the intensity,
4 persistence, and limiting effects of her physical symptoms generally
5 inconsistent with the evidence. Again, the claimant alleges that the
6 back impairment and related symptoms precludes all work activity and
7 forces her to lie down and rest the majority of the day. As summarized
8 above, the record confirms remote lumbar spine surgeries and recovery
9 with relevant residual signs and symptoms. However, imaging from
September 2019 was unremarkable and other records repeatedly
document a normal unassisted gait, intact lower extremity sensation,
and/or normal motor strength (See, e.g., Exhibits B13F/6, B19F/11, 19,
24, B22F/5, B23F/30, 49, 77, 83, 95). Follow up imaging in August 2020
was also normal and a contemporaneous physical examination did not
reveal neurological deficits (Exhibit B18F/3-5).¹⁰⁷

10 The ALJ went on to further articulate:

11 Notably, on multiple occasions the claimant presented in no acute
12 distress without objective signs of overt pain behavior (See, e.g.,
13 Exhibits 3F/5, 6F/13, 17, 8F/15, 10F/6, 14, 22F/5). As noted, the record
14 references a remote walker prescription. She was also prescribed a
15 cane in March 2019 (Exhibit B3F/4). However, the record does not
16 confirm actual consistent use of any ambulatory assistive device during
17 the adjudicatory period. And, as discussed, the record repeatedly shows
18 a normal unassisted gait/ambulation. The undersigned also notes that
19 the record references use of a caretaker at least as of June 2019 (Exhibit
B5F). However, the evidence does not include documentation of the
same, nor the need for, or actual use of a caretaker throughout the
adjudicatory period. The undersigned also finds the generally sporadic
lumbar spine symptomology and conservative treatment course since
around mid-2019 inconsistent with the claimant's allegation that the
impairment renders her disabled secondary to chronic pain and
weakness. Again, the recent treatment records in evidence are

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22 ¹⁰⁷ AR 42.
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1 generally void of evidence supporting the claimant's allegations
2 (Exhibit 23F).¹⁰⁸

3 The ALJ then went on to articulate that although Plaintiff's allegations were
4 inconsistent with the record overall, the evidence did show some limitation which
5 she consistent with the limitation to light work, which Dr. Golub opined to be
6 appropriate.¹⁰⁹

7 Plaintiff alleges that the ALJ cited to Dr. Golub, who cited to drug seeking
8 behavior and cited to Exhibit 22F, page 5 and Exhibit 19F, page 6, and further
9 alleged that Dr. Golub had not even reviewed Exhibit 22F, page 5.¹¹⁰ First, the
10 Court again notes that Plaintiff's argument that Dr. Golub did not review the
11 medical record entry at Exhibit 22F regarding Plaintiff's November 2021 treatment
12 is erroneous. Additionally, the ALJ did not cite to narcotic seeking behavior. The
13 ALJ cited to Exhibit 22F, page 5 in stating that it was one of many times that
14 Plaintiff presented in no distress and with no overt pain behavior, a normal
15 unassisted gait, intact lower extremity sensation, and lower extremity strength.¹¹¹

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19 ¹⁰⁸ AR 42-43.

20 ¹⁰⁹ AR 43.

21 ¹¹⁰ ECF No. 9 at 18.

22 ¹¹¹ AR 43.

1 The ALJ cited to Exhibit 19F, page 6 as a record that referenced PTSD and anxiety
2 related symptoms.¹¹²

3 Plaintiff alleges that the ALJ did not specifically consider Plaintiff's
4 testimony that she had sciatic pain radiating into her lower extremities; left sided
5 pain radiating to her toes; pain and spasm in her low back when sitting, standing,
6 and walking; and the need to lie down with her feet elevated.¹¹³ But the ALJ did
7 consider each of those allegations. The ALJ noted:

8 Per hearing testimony, the claimant's core allegation is that a lumbar
9 spine impairment precludes all work activity on a consistent and full-
10 time basis. She reported multiple lumbar spine surgeries before the
11 subject Title XVI application date with continuing pain and functional
12 limitations during the adjudicatory period. She acknowledged that she
13 is able to walk but described some weakness and explained that she
14 cannot lift and carry twenty pounds. She described chronic lower back
15 pain and nerve pain that sometimes shoots down her left lower
16 extremity. She also reported back spasms. She testified that these
17 symptoms often force her to lie down on her right side or sit in a
18 reclining chair. She estimates spending 50% of a typical day laying
19 down/resting in a recliner. The claimant reported current treatment
20 with muscle relaxers and gabapentin. She explained that the
21 medications result in drowsiness and that she falls asleep for about one
22 hour after using the medications. She also described use of heat and
23 ice pads. She also reported previous treatment with steroidal injections
and physical therapy (Hearing Testimony). The claimant described
similar lower back pain and restricted exertional and postural abilities
in her function report (Exhibit B8E).¹¹⁴

20 ¹¹² AR 44.

21 ¹¹³ ECF NO. 9.

22 ¹¹⁴ AR 40.

1 The ALJ then went on to explain as noted above that while those allegations
2 were supported during the time prior to the relevant period there was
3 improvement noted in July 2019 and that by September 2019, those allegations
4 were not consistent with the record.¹¹⁵

5 Plaintiff appears to argue that because the ALJ did not address each and
6 every allegation separately and addressed her allegations as a whole, the ALJ
7 erred. The Court disagrees. As noted above, the ALJ cited to records which
8 indicate Plaintiff was able to sit without difficulty, was able to walk unassisted
9 with a normal gait, had normal motor strength, had normal sensation, and
10 displayed no overt signs of pain on examination.¹¹⁶ Overall, the Court finds the
11 ALJ's findings to be supported by the record as a whole.

12 The Court finds that the ALJ accurately recited the testimony and record
13 and further concludes that the ALJ adequately explained her reasoning. The
14 Court declines to remand as to this issue.

15 4. Summary

16 It is the ALJ's responsibility to review and evaluate the conflicting evidence
17 and Plaintiff's subjective complaints.¹¹⁷ The ALJ meaningfully explained why she
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20 ¹¹⁵ AR 40-43.

21 ¹¹⁶ Id.

22 ¹¹⁷ *Tackett v. Apfel*, 180 F.3d 1094, 1102 (9th Cir. 1999).
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1 evaluated Plaintiff's subjective complaints as she did, and these reasons are
2 supported by substantial evidence.

3 **IV. Conclusion**

4 Accordingly, **IT IS HEREBY ORDERED:**

- 5 1. The ALJ's nondisability decision is **AFFIRMED**.
6 2. The Clerk's Office shall **TERM** the parties' briefs, **ECF Nos. 9 and**
7 **10**, enter **JUDGMENT** in favor of **Defendant**, and **CLOSE** the case.

8 **IT IS SO ORDERED.** The Clerk's Office is directed to file this order and
9 provide copies to all counsel.

10 DATED this 13th day of March 2024.

11 

12 **EDWARD F. SHEA**
13 Senior United States District Judge
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